

Private Security Contractors On The Battlefield: Cat Herding And Reconstruction

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Private Security Contractors on the Battlefield:  
Cat herding and reconstruction

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## Introduction

Wednesday morning, March 31, 2004, began like most others, at least until the reports of smoking vehicles, an angry mob, and charred bodies being hanged from the "Brooklyn Bridge" in downtown Fallujah in the Al Anbar province of Iraq began pouring in. Closer observation revealed that four Americans had been murdered and, subsequently, mutilated in the streets to a cheering crowd. This was confusing to the Marines within the 1<sup>st</sup> Marine Division command center, as no units were reported to be within the city.<sup>1</sup> Further investigation revealed that four private security contractors conducting a convoy escort had entered the city with no forewarning or coordination with the Marines. Thus began the first battle of Fallujah, largely in response to the death of four contractors. The current relationship between military forces and private security contractors (PSC's) must be improved to ensure adequate force protection and unity of effort in the reconstruction of Iraq.

## Background

The word "contractor" typically refers to companies providing critical municipal services or significant logistical throughput. Companies include the goliath Kellog-Brown and Root, the much smaller AECOM providing

water and wastewater management, and Expedited World Cargo providing shipping services in and around Iraq. The relationship between these companies and the DOD are well defined as they have contractual relationships directly with the DOD.

Similarly, the responsibility for security of contractors is clearly stated in the Army manual FM 3-100.21, Contractors on the Battlefield. The manual illustrates that contractors have been, and will continue to be, critical to the role of the U.S. Armed Forces. The manual also states that these contractors "are not simply logistics but span the range of combat support and combat service support."<sup>2</sup> According to AR 715-9, Contractors Accompanying the Force, contractors are neither combatants nor noncombatants and are considered civilians "accompanying the force."<sup>3</sup> Typically a combatant is one who is commanded or controlled by a published chain of command, wears a distinctive insignia or uniform, and openly carries arms.<sup>4</sup>

The PSC's meet at least two and sometimes all three of these criteria. PSC's typically provide security for other contractors working on reconstruction efforts or act as protective security details (PSD) for high risk individuals. Companies like Blackwater Inc., DynCorp, and

Triple Canopy have emerged in this growing business. However, a gap exists between the established relationship defined in FM 3-100.21 and the evolution of the private security contractor.

**Current Relationship between Military Personnel and PSC's**

Currently, the geographic combatant commander has the responsibility to provide for the security of contractors who are in a direct support role to the DOD and within his area of operations.<sup>5</sup> Contractors hired by other agencies, such as Department of State (DOS) or the U.S. Agency for International Development (USAID), are often required by their contracts to provide for their own security and subsequently, sub-contract to private security firms for the service. Hence, the PSC's are not in a direct support role. Moreover, the combatant commander's responsibility is based on the premise that the contractors are neither combatants nor noncombatants as outlined above. The critical flaw of FM 3-100.21 is that it does not take into account the nature of the reconstruction effort of Iraq and the evolution of the PSC. Simply stated, there is a chain of "relationships" instead of a chain of "command" between contractors and the DOD, and their status is equally ambiguous. Given that the PSC is not a temporary anomaly but is here to stay within the context of the global war on

terror and the reconstruction of Iraq, a formal command relationship must be defined. Furthermore, according to a July 2005 GAO report, 25,000 PSC's are estimated to be operating in Iraq.<sup>6</sup>

At a time when joint and multi-national warfighting is the standard, the failure to integrate fully all forces within the area of operations is inexcusable. Had there been shared intelligence and a common tactical picture on March 31, 2004, the Blackwater agents may have chosen another route or adhered to the Marine policy of traveling in convoys with no fewer than four vehicles.<sup>7</sup>

In addition, according to the Government Accountability Office's report from July of this year, PSC's believe they are often fired upon without provocation by military checkpoint personnel and convoys. The military has dedicated significant resources towards reducing the possibilities of "blue on blue" engagements, yet the frequency of "blue on white" engagements (engagements between military personnel and PSC's) are seemingly on the rise. In fact, from January to May of 2005, twenty reports of "blue on white" incidents were filed with the Reconstruction Operations Center (ROC).<sup>8</sup>

While the DOD has realized this problem and taken corrective action, more needs to be done. Coalition

Provisional Authority (CPA) memorandum 17 issued by Paul Bremer in June of 2004 requires that PSC's be licensed, receive training, and be subject to American law rather than Iraqi law.<sup>9</sup> Multi National Corps-Iraq (MNC-I) also issued an order to all subordinate commands in December of 2004, which established certain tactics, techniques, and procedures (TTP's) for military and PSC units to prevent "blue on white" incidents.<sup>10</sup>

Furthermore, prior to that order, in October of 2004, the Project and Contracting Office established the Reconstruction Operations Center (ROC). The ROC was designed to facilitate communication between contractors and military personnel. The ROC headquarters is currently located in Baghdad with regional offices in each of the six major provinces of Iraq.<sup>11</sup> However, since the advent of the ROC, relationships between PSC's and military personnel have seemingly improved; however, the relationship is still a voluntary one on the part of the PSC's. This relationship is voluntary because there is no existing contractual relationship between the operational commander and the PSC. While most PSC's realize the utility of coordination through the ROC, the possibility for the recurrence of events such as those of March 2004 still exists.

### **Force Protection and Unity of Effort**

In order to empower the ROC, create well defined criteria for acceptable behavior by both PSC's and military personnel, provide guidance to companies awarded reconstruction contracts on acquiring private security, and educate military personnel on the roles and expected relationships between PSC's and military members, three actions must be taken.

1) The DOD must require contractors who are subcontracting private security services to stipulate, as a matter of contract, mandatory coordination with the ROC for all movements and operations. According to FM 3-100.21, "duties of the contractors are established solely by the terms of their contract—they are not subject to Army regulations or the UCMJ."<sup>12</sup> Because PSC's are a function of private industry, they would have no choice but to honor their contractual obligations. By virtue of being the awarding authority for contracting, the DOD could then exercise control over the contracts and subsequent sub-contracts. By conducting coordination with the ROC, PSC's would gain vital situational awareness as well as potential quick reaction forces and medical assistance (if available) when needed.<sup>13</sup> As a result of this, military commanders would undoubtedly find the knowledge of PSC's and their

associated missions within their area of operations to be useful.

2) Private security firms who subsequently and consistently fail to adhere to contractual obligations would be "black listed." In being "black listed," a private security firm would lose its privileges to be awarded contracts within Iraq. A subsequent by-product of this, as already alluded to in a Government Accountability Office (GAO) report of June 2005, would be an approved vendors' list.<sup>14</sup> In creating such a list, companies contracted for reconstruction efforts would be given guidance on the best private security firms available for contracting. In layman's terms, the DOD would apply the "carrot and the stick." The carrot would be the efficiencies of coordination with the ROC, but the stick would never be very far away. In a world of multi-million dollar contracts where some PSC's earn as much as 750 dollars a day, the stick would be rather ominous.

3) Implement pre-deployment training for all military personnel on the role of private security contractors. Deploying units receive a great deal of training regarding theater specific rules of engagement, yet training regarding the role of PSC's is strikingly absent. This implementation was also suggested by the above mentioned

GAO report, yet to date no actions have been taken.<sup>15</sup> This training must initially come from Central Command (CENTCOM) or Multi National Force Iraq in the form of written guidance. Procedures would be very similar to the distribution process of rules of engagement (ROE). The military must realize that military action is only one arm of reconstruction and that the PSC's are vital enablers of governance and security. More importantly, PSC's are unquestionably here to stay.

### Counterarguments

The second and third order consequences of "black listing" a PSC could result in a slowed reconstruction effort. If a reconstruction contractor loses a security contractor, their ability to conduct reconstruction efforts would be dramatically diminished until a new PSC was hired. However, the second and third order consequences of March 31, 2004 and its aftermath were of a significantly greater cost. Delay is a minor price to pay. In addition, the subsequent "approved vendor's list" as alluded to earlier would mitigate the consequences of "black listing" a PSC.

An argument can also be made that PSC's are not DOD personnel and that by requiring certain contractual obligations, as outlined above, a level of control is implied. After all, what happens when a PSC has a job to

do and is told no by the ROC? A conflict could exist between the goals of private industry and military operations.

Senate Bill 768 states that by declaring a "contingency operation," civilian constitutional rights may be replaced with those of the UCMJ on a temporary basis if the Secretary of Defense deems it necessary.<sup>16</sup> Since PSC's are already bound by CPA Memo 17 and can be held to the same standards as all other American citizens, additional legislation would likely not be necessary. Ultimately, while military operations and the needs of PSC's may seem to be at odds, they are both working towards the same end state, only in a different manner. A level of understanding and cooperation must exist between the military and the PSC; attitudes of "us vs. them" have no place in the current operating environment.

Similarly, in a time competitive environment the concept of incorporating pre-deployment training is a daunting one. Most would agree enough mandated pre-deployment training already exists with too little time to accomplish it. A degree of ingenuity would be required, but the pay-off is too high to ignore. A simple program to educate service members on the role and functions of the ROC, their reporting requirements, and the role and

functions of the PSC's and their reporting requirements could be accomplished in a matter of a few hours. This could include lessons learned from the current operating environment, as well as rules of engagement dealing with PSC's.

### Conclusion

Due to the large number of PSC's operating in Iraq and the long-term commitment to the reconstruction of Iraq, the relationship between all personnel within theater must be clearly defined. The second and third order consequences of failing to coordinate the actions of PSC's in support of reconstruction efforts are very clear. The risks of "blue on white" engagements as well as the events of March 31, 2004 are likely to continue if actions to achieve unity of effort are not implemented.

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<sup>1</sup> Bing West, *No True Glory: A Frontline Account of the Battle of Fallujah* (New York, Bantam Dell, 2005), 1-7.

<sup>2</sup> FM 3-100.21 *Contractors on the Battlefield* (Headquarters, Department of the Army, 2003), 1-1.

<sup>3</sup> Army Regulation 715-9 *Contractors Accompanying the Force* (Headquarters, Department of the Army, 1999), 10.

<sup>4</sup> FM 3-100.21 *Contractors on the Battlefield*, 21.

<sup>5</sup> FM 3-100.21 *Contractors on the Battlefield*, 34

<sup>6</sup> Government Accountability Office, *Rebuilding Iraq, Actions needed to improve use of Private Security Providers* (GAO-05-737, 2005), 24.

<sup>7</sup> Bing West, *No True Glory*, 14.

<sup>8</sup> GAO-05-737, 6.

<sup>9</sup> Coalition Provisional Authority, Memorandum Number 17 (2004).

<sup>10</sup> GAO-05-737, 6.

<sup>11</sup> GAO-05-737, 6-8.

<sup>12</sup> FM 3-100.21, *Contractors on the Battlefield*, 2-1.

<sup>13</sup> GAO-05-737, 9.

<sup>14</sup> GAO-05-737, 11-14.

<sup>15</sup> GAO-05-737, 22.

<sup>16</sup> Gordon L. Campbell, *Contractors on the Battlefield: The ethics of paying civilians to enter harm's way and requiring soldiers to depend on them* (Joint Services Conference on Professional Ethics, 2000), 5-7.

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